IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1055 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANORIA DYECHEM LTD.

Versus

SALES - TAX OFFICER (1) CLASS 1, DIVISION 1

Appearance:

1. Special Civil Application No. 1055 of 2001
MR KH KAJI for Petitioner No. 1
MR MANISH K KAJI for Petitioner No. 1
MR UR BHATT, AGP. for Respondents No. 1-2

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 03/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the Constitution, the petitioner is challenging the coercive

recovery of sales tax dues by the respondent authorities, on the ground that in view of the pendency of the petitioner Company's Reference under Sick Industrial Companies (Special Provisions) Act,1985 (hereinafter referred to as 'SICA' for short), the respondents cannot make any coercive recovery.

2 In response to the notice, on behalf of the respondents, affidavit-in-reply has been filed contending that when the petitioner is recovering sales tax from its customers there is no reason why the petitioner should be granted protection against the coercive recovery. In rejoinder, Mr.Kazi for the petitioner points out that as per the minutes of the proceedings drawn by BIFR for the hearing held on 3/1/2001, cut-off date for crystallization of the dues of the Company is fixed 30/6/2001, and therefore, the petitioner cannot be required to pay up sales tax for the period prior to 30/6/2001.

3 Having heard Mr.Kazi, learned Counsel for the petitioner and Mr.U.R.Bhatt, learned Assistant Government Pleader for the respondents, we find that in view of the provision of Section 22 of SICA Act and aforesaid proceedings before the BIFR, it will be just and proper to dispose of the petition with a direction that the respondents shall not make any recovery of the sales tax dues of the petitioner Company for the period till 30/6/2001 except in accordance with such scheme for revival and rehabilitation as may be framed by BIFR or after obtaining prior approval of the BIFR subject to the condition that the petitioner Company pays its sales tax dues for the period from 1/7/2001 onwards regularly and in accordance with law. Mr.Kazi states that the petitioner has already paid sales tax for the period from 1/7/2001 to 31/7/2001 and that for the subsequent period the petitioner Company shall pay the same in accordance with law.

4 In view of the aforesaid statement and discussion, we partly allow the petition quashing and setting aside the impugned notice dated 11/1/2001 and 19/1/2001 (Annexure "B" collectively) restraining the respondents from recovering the sales tax from the petitioner for the period prior to 30/6/2001 except in accordance with the BIFR Scheme and except with the prior permission of the BIFR. We further direct the petitioner Company to inform the respondent authorities about the progress and/or failure of the Scheme before the BIFR and the final outcome of the proceedings before the BIFR as and when they stand concluded before the BIFR.

5 The respondent authorities shall also issue Form No."C", "H" and "19" to the petitioner Company in accordance with law after proceeding on the basis that no coercive recovery is to be made from the petitioner Company for the sales tax dues for the period prior to 30/6/2001 as per aforesaid directions.The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent only with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt